

United States
Circuit Court of Appeals

For the Ninth Circuit.

NAVIGAZIONE LIBERA TRIESTINA, a Cor-
poration,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

FILED
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PAUL P. O'BRIEN,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL OF
RECORD.

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ANTHONY SAVAGE, Esquire, Attorney for Ap-
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for Appellee, 310 Federal Building, Seattle,
Washington. [1, 2*]

In the Northern Division of the United States Dis-
trict Court for the Western District of Wash-
ington.

No. 12,518.

NAVIGAZIONE LIBERA TRIESTINA, a Cor-
poration,

Plaintiff,

vs.

HENRY BLACKWOOD, Acting United States
Collector of Customs at the Port of Seattle,
Washington, and UNITED STATES OF
AMERICA, a Sovereign State,

Defendants.

*Page-number appearing at the foot of page of original certified
Transcript of Record.

COMPLAINT.

Comes now the plaintiff above named, and for cause of action against the above-named defendants, and each of them, alleges:

I.

That at all of the times hereinafter mentioned, the defendant Henry Blackwood was, and now is, the duly appointed and qualified Acting United States Collector of Customs at the port of Seattle, Washington, and was at all of the times herein mentioned, and now is, acting in such capacity, and upon information and belief, that he is a resident of the said city of Seattle, State of Washington, and within the jurisdiction of this court.

II.

That at all of the times hereinafter mentioned, the United States of America was, and now is, a sovereign state.

III.

That at all of the times hereinafter mentioned, the plaintiff, *Navigazione Libera Triestina*, was and now is, the owner and operator of various motorships plying between ports of the United [3] States of America and ports of Italy, one of the said motorships being the motorship "Cellina," engaged in the business of carrying mails, passengers and goods for hire between the aforesaid ports, and that at the time of the commission of the alleged illegal act hereinafter referred to, there

were subsisting between the plaintiff and various individual shippers valid and binding contracts for the carriage for hire of various goods and commodities between the ports of the United States of America and the ports of foreign countries and return.

IV.

That at all of the times hereinafter mentioned, Giovanni Prigl was, and now is, the Master and in charge of the motorship "Cellina," and the one on board the said motorship to whom the immigration instructions hereinafter set forth were given subsequent to the arrival of the said vessel at the port of Seattle on or about the 17th day of March, 1927.

V.

That prior to the sailing of the said vessel from the port of Trieste, Italy, bound on a voyage therefrom to ports of the United States of America, and more particularly the port of Seattle, Washington, there were signed on board the said vessel, among others, as members of the crew thereof, and as *bona fide* seamen, Domenico Lachich and Constantino Camalich, citizens of the Kingdom of Italy and aliens to the United States of America; that the said Domenico Lachich and Constantino Camalich, and all of the remaining members of the crew of the said motorship "Cellina" signed on board the said vessel on the said voyage, were not voluntarily chosen and/or hired as members of the crew thereof, but were assigned to and sent on board the said vessel by the captain of the port of Trieste,

an official of the Kingdom of Italy, to fill vacancies in the crew of the said vessel, and that neither the plaintiff herein nor Giovanni Prigl, as Master of [4] the said motorship "Cellina" had, nor exercised any choice in the selection of the said Domenico Lachich and/or the said Constantino Camalich as members of the crew of the said vessel on the said voyage.

VI.

That heretofore and on the 17th day of March, 1927, the said Italian motorship "Cellina" arrived at the port of Seattle, Washington, from the port of Vancouver, British Columbia, a port foreign to the United States, with the said Domenico Lachich and Constantino Camalich then and there on board as members of the crew thereof. That prior to the arrival of the said vessel at the said port of Seattle, as aforesaid, the immigration authorities of the United States of America at the said port were duly and properly advised of the time and place of the arrival of the said vessel by its properly constituted agents, but in spite of such advices, properly and duly given, no representatives from the immigration service of the United States of America presented themselves, nor boarded the said vessel for the purpose of examining and/or inspecting the officers and members of the crew thereof upon its said arrival from Vancouver, British Columbia, as aforesaid, as required by the laws of the United States, and no representatives from the said United States Immigration Service presented himself, nor boarded the said vessel until

at or about the hour of 10:00 A. M. on the 18th day of March, 1927, at which time Inspector Rafferty of the United States Immigration Service at the said port of Seattle boarded the said vessel to inspect and examine the officers and members of the crew of the said vessel, in accordance with the provisions of Section 20 of the Immigration Act of May 26, 1924; that the said members of the said crew of the said vessel, and all of them, including Domenico Lachich and Constantino Camalich, were then and there mustered on the deck of the said vessel, willing and anxious [5] to be examined and inspected; that upon such inspection of the crew as was given by the said Inspector Rafferty, which plaintiff alleges was not a proper inspection as hereinafter set forth, a blanket notice to detain all of the members of the crew of the said vessel was then and there issued by the said Inspector Rafferty, and at the time of the said inspection of vessel, Giovanni Prigl; that at the time of the boarding of the said vessel by the said Inspector Rafferty, and at the time of the said inspection of said officers and crew of the said vessel, and at the time of the issuance of the said blanket detention order and service of the same upon the Master of the said vessel, Giovanni Prigl, all of the officers and members of the crew of the said vessel, including the said Domenico Lachich and Constantino Camalich, and constituting the entire personnel, were then and there on board the said vessel within the confines of the port of Seattle, State of Washington; that the said Giovanni Prigl, as Master of the

said vessel, upon being tendered the said blanket detention order, refused to accept the same and protested against the issuance of such an order detaining on board of said vessel all of the members of the crew of the said vessel; that the said blanket detention order was issued contrary to the rules and regulations of the Department of Immigration of the United States of America and/or of the laws of the United States of America applicable thereto; that thereupon the said Inspector Rafferty refused to issue any other supplementary or different order detaining any less than all of the members of the crew of the said vessel on board thereof, and then and there left and departed from the said vessel, asserting that proper and complete inspection and examination had been made of the crew thereof, and a proper detention order issued. Thereupon the members of the crew of the said vessel, including the said Domenico Lachich [6] and Constantino Camalich, were set to work at their various duties aboard the said vessel, and the said Domenico Lachich and Constantino Camalich were then and there directed and ordered to commence the work of scraping and painting the outside forward part of the said motorship, which work they, and each of them, then and there commenced to perform; that the said blanket detention order then and there issued and so served upon the Master of the said vessel by the said Inspector Rafferty, as aforesaid, constituted and was a detention order issued subsequent to an alleged inspection and examination of the crew of the said vessel, and was intended by

said United States Immigration Service and construed to be by the Master of the vessel as the final, conclusive, and only order detaining members of the crew of the said vessel thereof subsequent to its arrival from a foreign port, although its issuance was contrary to the rules and regulations of the United States Immigration Service and the laws of the United States applicable thereto.

VII.

That thereafter, and during the stay of the said vessel at the port of Seattle, Washington, and in spite of every effort and care on the part of the Captain, officers, and agents of the said vessel, the said Domenico Lachich and Constantino Camalich escaped therefrom, and their whereabouts became, and remain to be, unknown to plaintiff herein and/or the owners, officers and agents of said vessel.

VIII.

That the members of the crew and seamen of the motorship "Cellina" were not given a fair, or any, hearing prior to the issuance of the said blanket detention order detaining all of the members of the crew of the said vessel thereon; that the said members of the crew and seamen of the said vessel, and more particularly the said Domenico Lachich and Constantino Camalich [7] were not examined by the said Inspector Rafferty as to their right to land and/or enter the United States of America, and more particularly the port of Seattle, Washington, nor were they, or any of them, properly physically

examined by the medical examiners as required by the laws of the United States of America, and more particularly the Immigration Act of May 26, 1924, and that the said blanket detention order heretofore issued did not name the members of the crew of the said vessel sought to be detained thereon, nor did it name the said Domenico Lachich and Constantino Camalich, as required and contemplated by the rules and regulations of the Department of Immigration, United States of America, and/or the laws of the United States; nor were the said Domenico Lachich and Constantino Camalich given an opportunity to prove to the United States Immigration authorities that they, and each of them, were *bona fide* seamen, free from objectionable disease, and entitled to land in the United States under and by virtue of the provisions of the laws of the United States, and more particularly Section 3 of the Act of May 26, 1924; that although the said Domenico Lachich and Constantino Camalich had arrived at the port of Los Angeles, California, on board the motorship "Cellina" on or about the 5th day of March, 1927, on the voyage in question, and they and each of them had been duly and properly inspected and examined at the said port by the immigration officials of the United States of America there stationed, neither they, nor either of them, were ordered detained aboard the said vessel at the said port of Los Angeles, California; that thereafter the said vessel proceeded to the port of San Francisco, California, arriving thereat in due course on or about the 5th day of March, 1927, and that neither

the said Domenico Lachich, nor the said Constantino Camalich were ordered detained aboard the said vessel at the said port of San Francisco, California; that thereafter the said vessel proceeded to the port of Vancouver, British Columbia, returning [8] thereafter to the port of Seattle, Washington, and arrived thereat on the 17th day of March, 1927, as aforesaid, and then and there, for the first time, although they had previously been inspected and examined by the United States immigration authorities at the port of Los Angeles, California, twelve days previously, they were ordered detained aboard the said vessel without proper inspection or examination, and without being given an opportunity to prove that they were *bona fide* seamen as contemplated by the laws of the United States, and entitled to land at the said port of Seattle, Washington, and/or in the United States of America.

IX.

That subsequent to the escape of the said Domenico Lachich and Constantino Camalich from the said vessel, and upon its departure from the said port of Seattle, Washington, without their, or either of them being on board, the United States Immigration authorities and/or the Acting Collector of Customs of the United States of America, one of the defendants herein, served notice on the plaintiff herein and/or its agent of the intention of the United States of America to levy a fine in the sum of \$2,500.00 for the failure to detain thereon the said Domenico Lachich and Constantino Cama-

lich; that thereafter, and in accordance with demand made, as aforesaid, plaintiff herein filed a proper bond in the sum of \$2,500.00, conditioned that should an appeal be taken to the Department of Labor, Washington, D. C., and denied, and the fine finally levied, the sum of \$2,000.00 would be paid; that thereafter an appeal was lodged with the United States Department of Labor but the fine heretofore levied was then and there imposed and plaintiff herein has paid to the defendants herein the sum of \$2,000.00, said sum being paid under protest in order to obtain the clearance of the said vessel from the port of Seattle, Washington; [9] that upon the imposition of the said fine, and for the purpose of effecting collection of the same, the said defendants refused clearance papers to the said motorship "Cellina" on or about the 7th day of February, 1928, and thereupon, to effect the clearance of the said vessel, and to prevent inconvenience to passengers aboard the said vessel and a breach of its merchandise contracts for the carriage of goods, the plaintiff paid to the said Henry Blackwood, as Acting Collector of Customs at the port of Seattle, Washington, under duress and protest, the said fine in the sum of \$2,000.00, so illegally imposed and collected, as aforesaid, and that although demand has been made upon the said defendant, Henry Blackwood, for the return of the said sum of \$2,000.00, said defendant has wholly failed, refused, and neglected to return the same or any part thereof to the plaintiff, and

the whole of said sum is now due and owing to the plaintiff from the said defendants.

X.

That under and by virtue of the laws of the Kingdom of Italy, a corporation organized and existing under and by virtue of the laws of the respective states of the United States of America may sue the Kingdom of Italy under the circumstances presented here and/or if the said corporation or corporations so existing have a cause of action against the said Kingdom of Italy.

WHEREFORE, the plaintiff prays judgment against the defendants in the sum of \$2,000.00, together with interest at the legal rate from the date of payment thereof, together with its costs and disbursements herein incurred, and for such other and further relief as it may be entitled to receive.

Dated: This 30th day of July, 1928.

NAVIGAZIONE LIBERA TRIESTINA.

By GENERAL STEAMSHIP CORPORATION,
Agent.

By DREW CHIDESTER,
Its Vice-president.

IRA S. LILLICK,
BOGLE, BOGLE & GATES,
Attorneys for Plaintiff. [10]

State of California,
City and County of San Francisco,—ss.

Drew Chidester being first duly sworn, deposes and says:

That he is an officer, to wit, the vice-president of the General Steamship Corporation, agent of Navigazione Libera Triestina, a corporation, the plaintiff herein, and as such officer he is authorized to make this verification in its behalf; that he has read the foregoing complaint and knows the contents thereof, and that the same is true except as to such matters as are therein alleged to be upon information and belief, and as to such matters, he believes it to be true.

DREW CHIDESTER.

Subscribed and sworn to before me this 30th day of July, 1928.

[Seal] EDITH M. CLARK,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 3, 1928. [11]

[Title of Court and Cause.]

STIPULATION WITHDRAWING DEMUR-
RER AND ALLOWING FILING OF
AMENDED COMPLAINT.

WHEREAS, the plaintiff above named has heretofore filed its complaint in the above-entitled cause and the defendants have now filed a demurrer to said complaint, but have not answered herein,

IT IS HEREBY STIPULATED by and between the plaintiff, through its attorneys, Bogle, Bogle & Gates, and the defendants through their

attorneys, Anthony Savage, United States District Attorney and Tom DeWolfe, Assistant United States District Attorney, that the said demurrer heretofore filed be withdrawn and the plaintiff allowed to file its amended complaint herein with leave to defendants to file any further demurrer or pleading whatsoever to the said amended complaint of the plaintiff.

Dated this 5 day of January, 1929.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.
ANTHONY SAVAGE,
TOM DeWOLFE,
Attorneys for Defendants.

[Endorsed]: Filed Jan. 5, 1929. [12]

[Endorsed]: Received a copy of the within amended complaint this 5 day of Jan., 1929.

ANTHONY SAVAGE,
Attorney for Deft.

AMENDED COMPLAINT.

Comes now the plaintiff above named, and for cause of action against the above-named defendant, alleges:

I.

That at all of the times hereinafter mentioned, Henry Blackwood was the duly appointed and qualified acting United States Collector of Customs at the port of Seattle, Washington, and is a resident of the said city of Seattle, State of Washington, within the jurisdiction of this court.

II.

That at all times hereinafter mentioned, the defendant United States of America was, and now is, a sovereign state.

III.

That at all of the times hereinafter mentioned, the plaintiff, *Navigazione Libera Triestina*, was and now is an Italian corporation, organized and existing under and by virtue of the laws of the Kingdom of Italy, and is the owner and operator of various motorships plying between ports of the United States of America and ports of Italy, one of the said motorships being the motorship "Celine," engaged in the business [13] of carrying mails, passengers and goods for hire between the aforesaid ports, and that at the time of the commission of the alleged illegal act hereinafter referred to, there were subsisting between the plaintiff and various individual shippers valid and binding contracts for the carriage for hire of various goods and commodities between the ports of the United States of America and the ports of foreign countries and return.

IV.

That at all of the times hereinafter mentioned, Giovanni Prigl was, and now is an Italian subject and the Master in charge of the motorship "Celine," and the one on board the said motorship to whom the immigration instructions hereinafter set forth were given subsequent to the arrival of the

said vessel at the port of Seattle on or about the 17th day of March, 1927.

V.

That prior to the sailing of the said vessel from the port of Trieste, Italy, bound on a voyage therefrom to ports of the United States of America, and more particularly the port of Seattle, Washington, there were signed on board the said vessel, among others, as members of the crew thereof, and as *bona fide* seamen, Domenico Lachich and Constantino Camalich, citizens of the Kingdom of Italy and aliens to the United States of America; that the said Domenico Lachich and Constantino Camalich and all of the remaining members of the crew of the said motorship "Cellina" signed on board the said vessel on the said voyage, were not voluntarily chosen and/or hired as members of the crew thereof, but were assigned to and sent on board the said vessel by the captain of the port of Trieste, an official of the Kingdom of Italy, to fill vacancies in the crew of the said vessel, and [14] that neither the plaintiff herein, nor Giovanni Prigl, as Master of the said motorship "Cellina" had, nor exercised any choice in the selection of the said Domenico Lachich and/or the said Constantino Camalich as members of the crew of the said vessel on the said voyage.

VI.

That heretofore and on the 17th day of March, 1927, the said Italian motorship "Cellina" arrived

at the port of Seattle, Washington, from the port of Vancouver, British Columbia, a port foreign to the United States, with the said Domenico Lachich and Constantino Camalich then and there on board as members of the crew thereof. That prior to the arrival of the said vessel at the said port of Seattle, as aforesaid, the immigration authorities of the United States of America at the said port were duly and properly advised of the time and place of the arrival of the said vessel by its properly constituted agents, but in spite of such advices, properly and duly given, no representatives from the immigration service of the United States of America presented themselves, nor boarded the said vessel for the purpose of examining and/or inspecting the officers and members of the crew thereof upon its said arrival from Vancouver, British Columbia, as aforesaid, as required by the laws of the United States, and no representative from the said United States Immigration Service presented himself, nor boarded the said vessel until at or about the hour of 10:00 A. M. on the 18th day of March, 1927, at which time Inspector Rafferty of the United States Immigration Service at the said port of Seattle boarded the said vessel to inspect and examine the officers and members of the crew of the said vessel, in accordance with the provisions [15] of Section 20 of the Immigration Act of May 26, 1924; that the said members of the said crew of the said vessel, and all of them, including Domenico Lachich and Constantino Camalich, were then and there mustered on the deck of the said

vessel, willing and anxious to be examined and inspected; that upon such inspection of the crew as was given by the said Inspector Rafferty, which plaintiff alleges was not a proper inspection as hereinafter set forth, and as provided in Section 20 of the Immigration Act of May 26, 1924, a blanket notice to detain all of the members of the crew of the said vessel was then and there issued by the said Inspector Rafferty and served upon the Master of the said vessel, Giovanni Prigl; that at the time of the boarding of the said vessel by the said Inspector Rafferty, and at the time of the said inspection of said officers and crew of the said vessel, and at the time of the issuance of the said blanket detention order and service of the same upon the Master of the said vessel, Giovanni Prigl, all of the officers and members of the crew of the said vessel, including the said Domenico Lachich and Constantino Camalich and constituting its entire personnel, were then and there on board the said vessel within the confines of the port of Seattle, State of Washington; that the said Giovanni Prigl, as Master of the said vessel, upon being tendered the said blanket detention order, refused to accept the same and protested against the issuance of such an order detaining on board of said vessel all of the members of the crew of the said vessel; that the said blanket detention order was issued contrary to the rules and regulations of the Department of Immigration of the United States of America and/or of the laws of the United States of America applicable thereto; that thereupon the said Inspector

Rafferty refused [16] to issue any other supplementary or different order detaining any less than all of the members of the crew of the said vessel on board thereof, and then and there left and departed from the said vessel, ascertaining that proper and complete inspection and examination had been made of the crew thereof, and a proper detention order issued. Thereupon the members of the crew of the said vessel, including the said Domenico Lachich and Constantino Camalich, were set to work at their various duties aboard the said vessel, and the said Domenico Lachich and Constantino Camalich were then and there directed and ordered to commence the work of scraping and painting the outside forward part of the said motorship, which work they, and each of them, then and there commenced to perform; that the said blanket detention order then and there issued and so served upon the Master of the said vessel by the said Inspector Rafferty, as aforesaid, constituted and was a detention order issued subsequent to an alleged inspection and examination of the crew of the said vessel, and was intended by said United States Immigration Service and construed to be by the Master of the vessel as the final, conclusive, and only order detaining members of the crew of the said vessel thereof subsequent to its arrival from a foreign port, although its issuance was contrary to the rules and regulations of the United States Immigration Service and the laws of the United States applicable thereto, and contrary to Section 20 of the Immigration Act of May 26, 1924.

VII.

That thereafter, and during the stay of the said vessel at the port of Seattle, Washington, and in spite of every effort and care on the part of the captain, officers, and agents of the [17] said vessel, the said Domenico Lachich and Constantino Camalich escaped therefrom, and their whereabouts became, and remain to be, unknown to plaintiff herein and/or the owners, officers and agents of said vessel.

VIII.

That the members of the crew and seamen of the motorship "Cellina" were not given a fair, or any, hearing prior to the issuance of the said arbitrary blanket detention order detaining all of the members of the crew of the said vessel thereon; that the said members of the crew and seamen of the said vessel, and more particularly the said Domenico Lachich and Constantino Camalich were not examined by the said Inspector Rafferty as to their right to land and/or enter the United States of America, and more particularly the port of Seattle, Washington, nor were they, or any of them, properly physically examined by the medical examiners as required by the laws of the United States of America, and more particularly the Immigration Act of May 26, 1924, and that the said blanket detention order heretofore issued did not name the members of the crew of the said vessel sought to be detained thereon, nor did it name the said Domenico Lachich and Constantino Camalich, as required and contemplated by the rules and regula-

tions of the Department of Immigration, United States of America, and/or the laws of the United States; nor were the said Domenico Lachich and Constantino Camalich given an opportunity to prove to the United States Immigration authorities that they, and each of them, were *bona fide* seamen, free from objectionable disease, and entitled to land in the United States under and by virtue of the provisions of the laws of the United States, and more particularly Section 3 of the Act of May 26, 1924; that although [18] the said Domenico Lachich and Constantino Camalich had arrived at the port of Los Angeles, California, on board the motorship "Cellina" on or about the 5th day of March, 1927, on the voyage in question, and they and each of them had been duly and properly inspected and examined at the said port by the immigration officials of the United States of America there stationed, neither they, nor either of them, were ordered detained aboard the said vessel at the said port of Los Angeles, California; that thereafter the said vessel proceeded to the port of San Francisco, California, arriving thereat in due course on or about the 5th day of March, 1927, and that neither the said Domenico Lachich, nor the said Constantino Camalich were ordered detained aboard the said vessel at the said port of San Francisco, California; that thereafter the said vessel proceeded to the port of Vancouver, British Columbia, returning thereafter to the port of Seattle, Washington, and arrived thereat on the 17th day of March, 1927, as aforesaid, and then and there,

for the first time, although they had previously been inspected and examined by the United States immigration authorities at the port of Los Angeles, California, twelve days previously, they were ordered detained aboard the said vessel without proper inspection or examination, and without being given an opportunity to prove that they were *bona fide* seamen as contemplated by the laws of the United States, and entitled to land at the said port of Seattle, Washington, and/or in the United States of America.

IX.

That subsequent to the escape of the said Domenico Lachich and Constantino Camalich from the said vessel, and upon its departure from the said port of Seattle, Washington, without their [19] or either of them being on board, the United States Immigration authorities and/or the Acting Collector of Customs of the United States of America at the port of Seattle, Washington, served notice on the plaintiff herein and/or its agent of the intention of the United States of America to levy a fine in the sum of \$2,000.00 for the failure to detain thereon the said Domenico Lachich and Constantino Camalich. That thereafter and in accordance with demand made as aforesaid, plaintiff herein filed a proper bond in the sum of \$2,500.00 conditioned that should an appeal be taken to the Department of Labor at Washington, D. C., and denied, and the fine finally levied, the sum of \$2,000.00 would be paid. That thereafter an appeal was lodged with the United States Department of La-

bor, but the fine heretofore arbitrarily levied by the said Department of Labor was then and there imposed without justification and without authority under the Act of Congress of May 26, 1924, Chapter 190, Section 20 (A-C) 43 Statutes 164, and the plaintiff herein has paid to the defendant herein the sum of \$2,000.00, said sum being paid under protest in order to obtain the clearance of the said vessel from the port of Seattle, Washington. That upon the imposition of the said fine and for the purpose of effecting collection of the same, the defendant and Henry Blackwood, Acting Collector of Customs at the port of Seattle, Washington, refused clearance papers to the said motorship "Celine" on or about the 7th day of February, 1928, and thereupon to effect the clearance of the said vessel, and to prevent inconvenience to passengers aboard the said vessel, and in breach of its merchandise contracts for the carriage of goods, the plaintiff paid to Henry Blackwood as Acting Collector of Customs at the port of Seattle, Washington, under duress and [20] protest, the said fine in the sum of \$2,000.00 arbitrarily and illegally imposed and collected as aforesaid, and that although demand has been made upon the United States of America, and the Department of Labor, and Henry Blackwood, Acting Collector of Customs at the port of Seattle, Washington, for the return of said sum of \$2,000.00, said defendant has wholly failed, refused and neglected to return the same or any part thereof to the plaintiff and the whole of said

sum is now due and owing to the plaintiff from the said defendant.

X.

That under and by virtue of the laws of the Kingdom of Italy, a corporation organized and existing under and by virtue of the laws of the respective states of the United States of America may sue the Kingdom of Italy under the circumstances presented here and/or if the said corporation or corporations so existing have a cause of action against the said Kingdom of Italy.

WHEREFORE, the plaintiff prays judgment against the defendant in the sum of \$2,000.00, together with interest at the legal rate from the date of payment thereof, together with its costs and disbursements herein incurred, and for such other and further relief as it may be entitled to receive.

Dated this — day of January, 1929.

NAVIGAZIONE LIBERA TRIESTINA.

By GENERAL STEAMSHIP CORPORATION,
Agent.

By R. K. BROWN, Jr.,
Local General Manager at Seattle, Wash.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff. [21]

State of Washington,
County of King,—ss.

R. K. Brown, Jr., being first duly sworn, on oath deposes and says:

That he is general manager of the General Steamship Corporation at Seattle, Washington,

(4) That the amended complaint does not state facts sufficient to constitute a cause of action.

ANTHONY SAVAGE,
United States Attorney.

TOM DEWOLFE,
Asst. United States Attorney.

Received a copy of the within — this — day
of —, 19—.

_____,
Attorney for —.

[Endorsed]: Filed Jan. 14, 1929. [23]

ORDER SUSTAINING DEFENDANT'S DEMURRER TO AMENDED COMPLAINT.

This matter coming on for hearing the 21st day of January, 1929, before the above-entitled court and the Honorable E. E. Cushman, Judge thereof, upon defendant's demurrer to plaintiff's amended complaint on file herein and argument having been presented by counsel on both sides for and against said demurrer.

It is hereby ORDERED that the said demurrer be overruled on the first ground stated sustained on the fourth ground of demurrer as contained in defendant's demurrer on file herein, to wit: on the ground and for the reason that the said amended complaint does not state facts sufficient to constitute a cause of action, to which order sustaining the demurrer the plaintiff excepts and plaintiff's said

exception is hereby allowed, and plaintiff is allowed seven days to amend.

The demurrer on the second and third grounds is ignored as consideration of such grounds is not necessary.

Done this 24th day of January, 1929.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Filed Jan. 24, 1929. [24]

DECREE OF DISMISSAL.

On this 25 day of April, 1929, it appearing to the Court that the above-named defendant heretofore filed a demurrer to plaintiff's amended complaint, which said demurrer came on for hearing on the 24th day of January, 1929, and was thereupon sustained as to the fourth ground of said demurrer, to wit: On the ground and for the reason that said amended complaint does not state facts sufficient to constitute a cause of action, and said demurrer was overruled as to the first ground, the second and third grounds not being considered by the Court, and plaintiff thereupon given seven days to amend, and an order having been so entered, to which order plaintiff duly excepted and its exception allowed, and WHEREAS, this cause now having come on for further hearing and the plaintiff now having elected to plead no further in this said cause but to stand upon its said amended complaint,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that plaintiff's amended complaint be dismissed and that defendant have and recover judgment against the plaintiff for its costs herein to be taxed in the sum of \$——, to which decree plaintiff excepts, and exceptions hereby allowed. [25]

Done at Tacoma this 25 day of April, 1929.

EDWARD E. CUSHMAN,
District Judge.

The above order is hereby approved as to form.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.
TOM DEWOLFE,
Asst. U. S. Atty.,
Attorneys for Defendant.

[Endorsed]: Filed Apr. 26, 1929. [26]

NOTICE OF APPEAL.

To the United States of America, Defendant, and to Anthony Savage and Tom DeWolfe, Its Attorneys:

NOTICE IS HEREBY GIVEN that the plaintiff, Navigazione Libera Triestina, a corporation, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the above-entitled court, sustaining the demurrer of the defendant to plaintiff's amended complaint, which order was made on the 24th day of January, 1929,

and from the judgment of said Court dismissing the amended complaint of plaintiff, which said decree of dismissal was made on the 25 day of April, 1929, and from each and every part of said order and judgment.

NAVIGAZIONE LIBERA TRIESTINA, a Corporation.

By BOGLE, BOGLE & GATES,
Its Attorneys.

Service of the above notice of appeal after filing the same is hereby acknowledged this 26 day of April, 1929.

ANTHONY SAVAGE,
Attorneys for Defendant.

[Endorsed] Filed Apr. 26, 1929. [27]

PETITION ON APPEAL.

To the Honorable E. E. CUSHMAN, Judge of the United States District Court for the Western District of Washington, Northern Division:

Now comes the plaintiff, Navigazione Libera Triestina, a corporation, by its attorneys, and respectfully shows that on the 24th day of January, 1929, the above court sustained defendant's demurrer to plaintiff's amended complaint, and on the 25 day of April, 1929, final judgment was entered against plaintiff and in favor of the defendant dismissing the said amended complaint, to which said orders and judgment plaintiff duly excepted. Your

petitioner now feeling itself aggrieved by the said orders and judgment, herewith respectfully petitions this Court for an order allowing it to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit under the laws of the United States made and provided.

WHEREFORE, the premises being considered, your petitioner prays that an appeal in this behalf to said United States Circuit Court of Appeals for the correction of the errors complained of and herewith assigned be allowed, and that an order be made fixing the amount of security to be given by plaintiff, as appellant, conditioned as the law directs, and upon giving [28] such bonds as may be required, that all further proceedings may be suspended until the determination of said appeal by the said United States Circuit Court of Appeals. NAVIGAZIONE LIBERA TRIESTINA, a Corporation, Plaintiff.

By BOGLE, BOGLE & GATES,
Its Attorneys.

Service of the above petition is hereby acknowledged this 26 day of April, 1929.

ANTHONY SAVAGE,
Attorneys for Defendant.

[Endorsed]: Filed April 26, 1929. [29]

ASSIGNMENTS OF ERROR.

Comes now the plaintiff and appellant in the above cause, and in connection with its petition for

appeal in said cause, assigns the following errors, which plaintiff and appellant avers occurred in the proceedings, orders and judgments of the above court in this said cause and upon which it relies to reverse the judgment entered therein as appears of record.

I.

The above District Court erred in sustaining defendant's demurrer for the reason that plaintiff's amended complaint does state facts sufficient to constitute a cause of action against the defendant and the ground for said demurrer is not well taken.

II.

The above District Court erred in dismissing plaintiff's action for the reason that said final judgment of dismissal is based upon the Court's erroneous ruling sustaining said demurrer of the defendant, and said judgment of dismissal is erroneous for the same reason.

WHEREFORE, plaintiff and appellant prays that the [30] judgment of said District Court be reversed.

NAVIGAZIONE LIBERA TRIESTINA, a Corporation, Plaintiff.

By BOGLE, BOGLE & GATES,

Its Attorneys.

[Endorsed]: Received a copy of the within assignments of error this 26 day of April, 1929.

ANTHONY SAVAGE,

Attorney for Defendant.

[Endorsed]: Filed Apr. 26, 1929. [31]

ORDER ALLOWING APPEAL.

Now on this 17 day of June, 1929, this cause came on to be heard upon the petition of Navigazione Libera Triestina, plaintiff and appellant, praying that an appeal be allowed to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors assigned and complained of, and it appearing to the Court that said appeal should be granted,

IT IS THEREFORE ORDERED that said appeal be and the same is hereby allowed upon the condition that a cost bond on appeal conditioned and approved according to law, and in the sum of \$250.00 be furnished by plaintiff and appellant, and that a citation be issued and served as required by law.

Done in open court this 17 day of June, 1929.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: Filed Jun. 17, 1929. [32]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Navigazione Libera Triestina a foreign corporation, as principal, and American Surety Company of New York, a corporation duly authorized to transact a surety business in the State of Washington, as surety, are held and firmly bound unto

the United States of America, defendant in the above-entitled cause, in the full sum of two hundred and fifty dollars (\$250.00), lawful money of the United States, to be paid to the said United States of America, for which payment well and truly to be paid, we bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED and DELIVERED this 17th day of June, 1929, at Seattle, Washington.

WHEREAS, Navigazione Libera Triestina, a foreign corporation, filed and served a notice of appeal in the above-entitled cause on the 26th day of April, 1929, which said appeal was allowed by the above court on the 17th day of June, 1929, and [33] have appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered in this said cause on the 25th day of April, 1929, wherein and whereby a demurrer interposed by defendant to plaintiff's amended complaint was sustained, on the ground that plaintiff's said amended complaint failed to state facts sufficient to constitute a cause of action, and wherein the said defendant, above named, was given judgment against the plaintiff for its costs to be taxed in this said case, to which decree plaintiff duly excepted and exception was allowed:

NOW, THEREFORE, the condition of this obligation is such that if the above-named Navigazione Libera Triestina, a corporation, appellants in the above-entitled cause and principals herein, shall

duly prosecute the appeal with effect, and pay all costs which may be awarded against them as such appellants if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above-entitled Court, then this obligation shall be void, otherwise the same shall continue in full force and effect.

NAVIGAZIONE LIBERA TRIESTINA,

A Foreign Corporation.

By GENERAL STEAMSHIP CORPORATION,

[Seal]

R. K. BROWN, Jr.,

Its Duly Authorized Agent,

(Principal).

AMERICAN SURETY COMPANY OF
NEW YORK.

By S. H. MELROSE,

Its President and Vice-president,

(Surety). [34]

Attest: E. F. KIDD,

Resident Assistant Secretary.

State of Washington,

County of King,—ss.

On this 17th day of June, 1929, before me personally appeared R. K. Brown, Jr., to me known to be the general manager of the corporation that executed the within and foregoing instrument as agent for the plaintiff, and acknowledged the said

instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

STANLEY B. LONG,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

On this 17th day of June, 1929, before me personally appeared S. H. Melrose and E. F. Kidd, to me known to be the resident vice-president and resident assistant secretary of the American Surety Company of New York, the corporation that executed [35] the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[Seal] STANLEY B. LONG,
Notary Public in and for the State of Washington,
Residing at Seattle.

The foregoing bond and the sufficiency of surety thereon is on this 18 day of June, 1929, approved as a cost bond on appeal in this cause.

NETERER,
United States District Judge.

[Endorsed]: Filed Jun. 18, 1929. [36]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

We hereby request that you prepare, certify and file a transcript of the record on appeal to contain the following:

1. Complaint.
2. Stipulation.
3. Amended complaint.
4. Demurrer to amended complaint.
5. Order sustaining defendant's demurrer to amended complaint.
6. Decree of dismissal.
7. Notice of appeal.
8. Petition for order allowing appeal.
9. Order allowing appeal.
10. Cost bond on appeal.
11. Citation.
12. Assignments of error.
13. This praecipe.

In the preparation of said transcript of the record on appeal, you are requested to omit all captions except name [37] of the paper, and to omit acceptances of service, verifications and filing endorsement, except date thereof.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

STIPULATION RE PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

It is hereby stipulated and agreed by and between the attorneys for plaintiff and defendant herein that the foregoing praecipe contains all material matters, pleadings and records of the above-entitled action requisite for the prosecution of the appeal herein and that the attorneys for the defendant admit the sufficiency thereof.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.
ANTHONY SAVAGE,
Attorneys for Defendant.

[Endorsed]: Filed June 17, 1929. [38]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 38, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecepe of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [39]

| | |
|--|---------|
| Clerk's fees (Act Feb. 11, 1925), for making record, certificate or return, 79 folios at 15¢ | \$11.85 |
| Certificate of Clerk to Transcript of Record, with seal | .50 |
| <hr/> | |
| Total | \$12.35 |

I hereby certify that the above cost for preparing and certifying record, amounting to \$12.35, has been paid to me by the attorney for appellant.

I further certify that I attach hereto and transmit herewith the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District this 3d day of July, 1929.

[Seal] ED. M. LAKIN,
Clerk U. S. District Court, Western District of
Washington.

By S. E. Leitch,
Deputy. [40]

[Title of Court and Cause.]

CITATION ON APPEAL.

The United States of America to the United States
of America, Defendant and Appellee, GREET-
ING:

You are hereby cited and admonished to be and

appear in the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, thirty (30) days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein *Navigazione Libera Triestina* is appellant, to show cause, if any there be, why the order and judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable Edwin E. Cushman, Judge of the United States District Court, Western District of Washington, Northern Division, Seattle, Washington, this 17 day of June, 1929.

[Seal] EDWARD E. CUSHMAN,
Judge, United States District Court, Western District of Washington, Northern Division.

Service of the above citation acknowledged this 17 day of June, 1929.

ANTHONY SAVAGE,
Attorney for Defendant. [41]

[Endorsed]: No. 5875. United States Circuit Court of Appeals for the Ninth Circuit. *Navigazione Libera Triestina*, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United

States District Court for the Western District of Washington, Northern Division.

Filed July 6, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 5875.

NAVIGAZIONE LIBERA TRIESTINA, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA, a Sovereign State,

Appellee.

DESIGNATION OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You are hereby requested to include in the transcript on appeal in the above-entitled matter, the following designated records which have been transmitted to you by the Clerk of the United States District Court for the Western District of Washington, Northern Division:

1. Amended complaint.
2. Assignment of error.

3. Certificate of the Clerk of the United States District Court.
4. Decree of dismissal.
5. Demurrer to amended complaint.
6. Order sustaining defendant's demurrer to amended complaint.
7. Order allowing appeal.
8. Stipulation re filing amended complaint.

You are hereby requested not to include in the record any other documents than those above indicated or as set out in the praecipe or transcript of record on file herein.

IRA LILLICK

LAWRENCE BOGLE,

CHALMERS G. GRAHAM,,

Proctors for Appellants.

[Endorsed]: Filed Jul. 13, 1929. Paul P. O'Brien, Clerk.

